

# Court of Appeals, State of Michigan

## ORDER

People of MI v Ivan Frederick Berry

Docket No. 258828

LC No. 03-008165

Karen M. Fort Hood  
Presiding Judge

Michael J. Talbot

Brian K. Zahra  
Judges

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In lieu of granting the application for delayed leave to appeal, the Court remands for resentencing. The trial court erred in scoring Offense Variable 10 because there was no evidence that defendant engaged in preoffense behavior targeting the victims of the instant offense. MCL 777.40(3)(a). Consequently, the applicable guidelines range was 12-to-24 months as opposed to 19-to-38 months. MCL 777.64. While the record reflects that the trial court articulated substantial and compelling reasons for departing upwards from the guidelines, MCL 769.34(3), the stated reasons did not support a fivefold departure from the upper limit of the applicable guidelines range. *People v Babcock*, 250 Mich App 463; 648 NW2d 221 (2002), rev'd on other grounds 469 Mich 247 (2003). The case is REMANDED to the circuit court for further proceedings consistent with this order.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 08 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk